S T A T E O F T E N N E S S E E
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Opinion No. 12-63

Tennessee's Compulsory School Attendance Requirement

QUESTION

Does a 17-year-old student's enrollment in state-approved general educational development ("GED") programs under Tenn. Code Ann. § 49-6-3001(c)(2)(B) violate the compulsory school attendance requirements set forth at Tenn. Code Ann. § 49-6-3001(c)(1)?

OPINION

No. Tenn. Code Ann. § 49-6-3001(c)(2)(B) allows a 17-year-old student to enroll in state-approved GED courses in fulfillment of Tennessee's compulsory attendance requirement provided that, in the judgment of the local board of education, the student continues to make satisfactory progress in the GED courses.

ANALYSIS

The question posed concerns the interpretation of Tenn. Code Ann § 49-6-3001 and related rules promulgated by the Tennessee State Board of Education ("the Board"). Tenn. Code Ann. § 49-6-3001 generally requires all children between 6 and 17 years of age to attend public or nonpublic school. The pertinent portions of Tenn. Code Ann. § 49-6-3001(c)(1) state:

> Every parent, guardian or other legal custodian residing within this state having control or charge of any child or children between six (6) years of age and seventeen (17) years of age, both inclusive, shall cause the child or children to attend public or nonpublic school, and in event of failure to do so, shall be subject to the penalties provided in this part. . . .

Tenn. Code Ann. § 46-6-3001(c)(2)(B) provides the following exemption to this compulsory school attendance requirement:

> Subdivision (c)(1) does not apply to a child who:
>
> . . . .

> (B) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state-approved institution or organization or who has obtained a GED. Any institution or organization that enrolls a child who is under eighteen (18) years of age shall provide a report to the local board of education at least three (3) times each year relative to the progress of all such persons under eighteen (18) years of age. If the local board of education determines any child under eighteen (18) years of age is not making satisfactory progress, then the child shall be subject to subdivision (c)(1); . . .

Thus Tenn. Code Ann. § 46-6-3001(c)(2)(B) specifically establishes an exception to the compulsory attendance requirement where a student is enrolled and making satisfactory progress, as determined by the local board of education, in a course leading to a GED certificate from a state-approved institution or organization. *See Kentucky-Tennessee Clay Co. v. Huddleston,* 922 S.W.2d 539, 543 (Tenn. 1995) (stating the rule of statutory construction that an exception generally delineates the extent of the general provision and thus courts are precluded from diminishing an express exception).

The Board cannot establish a rule for the administration of this statute that voids, or is inconsistent with, this statutory exception. *Wright v. Tennessee Peace Officer Standards and Training Comm'n,* 277 S.W.3d 1, 15 (Tenn. Ct. App. 2008) (citing *Hobbs v. Hobbs*, 27 S.W.3d 900, 903 n. 1 (Tenn. 2000)). In any event, this Office finds no existing conflict between this statute and the Board's current rules related to this statute. Specifically, the Board has adopted rules governing the taking of the GED examination, which provide in pertinent part:

> A candidate must be eighteen (18) years of age before being eligible to take the GED test. A (17) [sic] year old may be allowed to take the examination upon the recommendation of the local school superintendent. The superintendent may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.

Tenn. Comp. R. & Regs. 0520-01-03-.06(6)(c).

No conflict exists between this rule and Tenn. Code Ann. § 49-6-3001(c)(2)(B). The rule addresses the circumstances under which a 17-year-old may take the GED test (*i.e.*, the student must be recommended by the local school superintendent), whereas the statute addresses a student that is enrolled in GED courses (*i.e.*, a student enrolled in GED courses must demonstrate "satisfactory progress" as determined by the local board of education). Both the rule and statute rely on representatives of the local board of education to evaluate eligibility for 17-year-old students to enroll in GED courses or take the GED test, and the statute affirms that any student who either is enrolled in GED courses or has obtained a GED is excluded from the compulsory attendance requirement of Tenn. Code Ann. § 49-6-3001(c)(1). This symmetry

between the Board rule and the statute is confirmed by Tenn. Comp. R. & Regs. 0520-01-03-.03(10)(c)(2), which states:

> A child must attend school until his/her 18th birthday unless:
>
> . . . .
>
> 2. He or she is enrolled in a course of instruction leading to a GED;

Accordingly, both Tenn. Code Ann. § 49-6-3001(c)(2)(B) and the Board rules permit 17-year-old students to enroll in state-approved GED programs, and such enrollment excludes these students from compulsory school attendance, provided the local board of education determines that such students are making satisfactory progress in their GED courses.

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